IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE:	§	CASE NO. 20-33948-11
	§	HOUSTON, TEXAS
FIELDWOOD ENERGY, LLC,	§	THURSDAY,
	§	DECEMBER 22, 2022
DEBTOR.	§	9:00 A.M. TO 9:24 A.M.

EXPEDITED MOTION HEARING (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

(Recorded via CourtSpeak; No log notes.)

(Audio distortion and echoing noted.)

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ALSO PRESENT: DAVID M. DUNN,
Plan Administrator

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(Please also see Electronic Appearances.)

HOUSTON, TEXAS; THURSDAY, DECEMBER 22, 2022; 9:00 A.M.

THE COURT: All right. Good morning. We are here in the Fieldwood Energy matter. It is Case No. 20-33948.

Appearances should have been made electronically. Let me go ahead and ask Movant to press five star and give me an update on where we are.

From area code 858-229-7401, who do we have?

MR. DUNN: Good morning, Your Honor. Joseph Dunn of Mintz Levin, on behalf of the Plan Administrator, and the Plan Administrator for the Record is also on the line.

THE COURT: Good morning.

All right. Tell me where we're going, Mr. Dunn.

MR. DUNN: Thank you, Your Honor.

We were here on -- I apologize, I'm getting some feedback on my end, Your Honor. I'm not sure if you're hearing that.

THE COURT: I am not. Do you want to maybe take off your line and see if that maybe resolves it?

MR. DUNN: I'll try to proceed. We are here on the Plan Administrator's --

THE COURT: Just feel free to dial back in. We're having a technical problem. I don't think there's a hurry. Let's get you where you can hear right.

Let me ask if anyone else is having trouble or hearing double feedback, in case it's on my end.

Mr. Eisenberg, I see you there. What's your phone --

MR. EISENBERG: I think I hear Mr. Dunn's dog, but I do have an echo on my line.

THE COURT: Okay. Mr. Dunn, should we just reconnect everything and start over? What do you want to do? It's up to you.

MR. DUNN: Your Honor, I could proceed and ignore the sound of my own voice. I will try to push through. If anyone else is having trouble, I'm happy to reconnect.

We're here this morning, Your Honor, on the Plan Administrator's Emergency Motion for Authority to Sell Certain Assets post-effective date of Debtor's Fieldwood Energy III. The motion was filed on December 7th at Docket 2719, along with the Declaration of the Plan Administrator at Docket 2719-1.

First of all, we appreciate you hearing this motion on an expedited basis. But the motion and the Declaration were served on the Master Service List by email and first class mail, as reflected in the Affidavit of Service filed at Docket 2721, and after the Court set this hearing, a notice of the hearing was filed at Docket 2722 and was served not only on the Master Service List, but on all creditors that had filed unsecured claims or were scheduled as having unsecured claims. And the Affidavit of

that service was filed at Docket 2724.

Your Honor, since that time, we've received no objections to the relief requested in the motion and none were filed on the Docket in the case. We did receive inquiries from Counsel for two parties, one being Counsel for United Petroleum and the other being Mr. Eisenberg on behalf of his client, seeking more information about the context of the sale, of the Warrants and of the relief requested in the motion.

And after productive conversations United Counsel confirms that they don't have any opposition to the relief requested and with respect to Mr. Eisenberg's client, I understand that they also do not oppose the relief request, but with one condition regarding the proceeds of the Warrant that I'll get to in just a moment.

Your Honor, we filed the motion out of an abundance of caution to see confirmation from the Court of the Plan Administrator's authority under the Plan to monetize the so-called GUC Warrants that were issued to Fieldwood III on the effective date of this Plan.

These GUC Warrants were issued by QuarterNorth Energy, or QNE, pursuant to the Plan, pursuant to the Warrant Agreement, that was approved as part of the Plan, and pursuant to an instruction letter dated as of the effective date, which was attached as Exhibits 1 and 2 to

the Plan Administrator's Declaration.

But there's no question that the GUC Warrants were issued to Fieldwood III on the effective date. We've been told by that post-effective date Debtor since that time. That same day the Plan Administrator was appointed and in that capacity there's a sole responsible person for Fieldwood III in carrying out its wind down efforts under the Plan.

Section 5.9 of the Plan, as we noted in our motion, grants the Plan Administrator fairly broad authority to take appropriate action to wind down the post-effective date Debtors and to generally maximize potential distributions to creditors, including disposing of the Debtor's remaining assets consistent with the Plan, and to do so without Court approval.

Section 10.2 of the Plan also authorizes the Plan Administrator to use and acquire and dispose of property of post-effective date Debtors in connection with winding down those entities.

And because the GUC Warrants constitute property of Fieldwood III, the Plan authorizes the Plan Administrator to monetize those Warrants as appropriate to capture the value of these assets that Fieldwood III can further reach the objective of maximizing potential distribution.

And there's been no objection to that conclusion.

To the extent in the context of this Plan, the GUC Warrants could not have been distributed to anyone else other than Fieldwood III on the effective date and still cannot.

The asserted GUC claims in this case totals about $28 billion. They have not been reconciled as of the effective date and are still subject to ongoing claims reconciliation, including these claims objections at this time.

Even if the claims pool was a fixed amount, Your Honor, distribution of the Warrants would have been -- in fact, they are relatively small number of Warrants, compared to the size of the claims pool. And even if an individual Warrant could somehow be divided to account for a particular dollar amount of an allowed GUC claim on a pro rata basis -- which we don't believe they can be divided -- there'd be no market for a single Warrant or a fraction thereof.

And in contrast, the Plan Administrator and Fieldwood III are in a position to accept the value of those Warrants to market them as a larger block and actually capture value from these assets through a timely distribution -- excuse me, a timely disposition in accordance with his business judgment.

And that's what the Plan Administrator has done. He engaged in a marketing process for the Warrants, received multiple bids, and was ultimately interested in negotiating

the terms of the sale to a third party who was willing to purchase large portions of Warrants at a price that the Plan Administrator believes is appropriate, is fair, and is consistent with the objective of maximizing value.

Which brings me to the reason for the motion, which was filed not to seek approval of this particular sale, per se, but rather to obtain confirmation of the Plan Administrator's general authority under the Plan with respect to monetizing the GUC Warrants.

And we sought this relief on an expedited basis for two reasons. First, this particular buyer wants to close the transaction before the end of the year, and the Plan Administrator doesn't want to lose this buyer and the purchase price and believes there is risk of the buyer walking if the transaction is delayed.

But more importantly, given the Plan language that we highlighted in the motion regarding the GUC Warrants, the Plan Administrator thought it was prudent to seek an Order confirming his authority out of an abundance caution, prior to consummating that transaction.

And the language that we highlighted in the motion is from Section 4.7 of the Plan. It indicated that the GUC Warrants would be issued on the effective date to holders of allowed GUC claims on a pro rata basis. And as I mentioned earlier, the GUC Warrants were actually issued to

Fieldwood III on the effective date, which makes sense given the impracticality of a pro rata issuance to a relatively small number of Warrants to its significant claims pool based on creditor claims that had still yet to be reviewed or addressed.

And I think the way to reconcile that language in Section 4.7 is really to look at the intentions that those assets were to be a potential source of recovery for unsecured creditors in Class 6 to 8. Any residual value as opposed to effective date Debtors after disposition of those assets and the winding down of the entities, would inure to the holders of allowed GUC claims through the residual distributable value concept that's embodied in the Plan.

And again, there's been no objection to the Court confirming the Plan Administrator's authority to monetize the Warrants.

I will just note in our conversations with Mr. Eisenberg, we did agree to modify the Order slightly to provide that prior to the Plan Administrator's expending any of the proceeds from the sale of GUC Warrants for administrative purposes, that we would revisit the issue with Mr. Eisenberg. And to the extent that there was any dispute, the parties could raise whatever that dispute is with the Court.

But aside from that, my understanding is that

there is no objection to the relief that was requested in the motion -- at least none that has been raised to our attention.

And with that, Your Honor, I'll pause and see if the Court has any questions.

THE COURT: Let me hear from anyone else that wishes to speak to the relief that's being sought today. If so, please press five star.

Mr. Eisenberg, your line remains open. Anyone else will need to press five star.

All right. Mr. Eisenberg?

MR. EISENBERG: Thank you, Your Honor. Yes, Philip Eisenberg on behalf of Merit Energy.

We are a general unsecured creditor in the case, Your Honor. And we got this motion. It's on an emergency basis. It seeks several things. One is to liquidate the Warrants to turn them into cash because in the business judgment of the Trustee -- of the Plan Administrator, this is the right thing to do at this point in time.

The question that we had was: How much are they going to be sold for? Who are they being sold to? And what is it that you are planning to do with the proceeds because the Warrants were issued under the Plan for distribution solely to the creditors.

And so we informally objected to the relief being

sought and we thought, well, we're not challenging the Plan Administrator's business judgment here on the fact that it makes sense to monetize these if a good opportunity comes.

But we don't want the fact that the GUC Warrants are being turned into cash in terms of nature and character of what the proceeds are, and that is property that is being held in trust essentially for the GUC creditors and not for use to -- and to spend the money to wind down Fieldwood III because that was not the Plan treatment and the Warrants got issued to Fieldwood III, based on a Plan Supplement, but that doesn't change the nature and character of what the Plan treatment was for the GUC. That was very plainly disclosed, Your Honor, that these were issued for distributions to the GUC creditors.

So the point where we take exception is what use could be made of the proceeds? But today on an emergency basis, we don't believe that we need to get to that. The emergency is: We have a buyer. We need to turn these into cash.

We don't have a problem with that, but we don't want the turning them into cash to change the nature and character of the funds themselves or the proceeds of them.

And so Mr. Dunn agreed to modify the Order to reflect that and to preserve the rights of all parties without any prejudice to come back to seek to use the funds

to set a purpose, other than distribution to the GUC creditors.

And so that's why we filed our Exhibit List, Your Honor.

THE COURT: Mr. Eisenberg, I actually disagree -- or maybe I agree with you too much.

MR. EISENBERG: Okay.

THE COURT: There's no way that this gets reconciled by saying that the expenses incurred by Mr. Dunn, other than expenses with respect to the actual liquidation of the docs that charged to those funds. I'm not going to leave it an open question.

If the Administrator wants the authority to do this, the way to reconcile these things is to say, not that these are being held in trust, which then gives people all sorts of authority. He is taking title in his name for them as beneficiaries, not in his name as Trustee who can then use it in accordance with the Trust.

So I don't have a problem, of course, expenses in getting this done and those are expenses that are going to largely mirror or be vastly (indiscernible) frankly what individuals would have if they had gotten the Warrants.

So, you know, the expenses of filing a motion, serving the motion, today's hearing, closing the deal, all of that can get charged to it, but beyond that, nothing can

get charged to it.

Now, if you want to later come in and upset that Order, Mr. Dunn, you can come in and seek that under Rule 59 or 60 or 9023 or 9024 or whatever rights you might have, but I'm not going to do it today and leave it open when I don't think there is ambiguity that it doesn't get spent on general administrative expenses.

The issue I have is: I don't understand -- and maybe we can get testimony on this -- why we're not being told who the purchaser is and why we're not being told what the amount of the sale is. If it were still in the marketing stage, I would understand it, but it sounds like you're done with marketing. You have a particular purchaser with a particular price, a particular name, and I'm not sure why we're not being told that and that bothers me.

Mr. Dunn?

MR. DUNN: Yes, I'm happy to address that, Your Honor.

So first of all, just with respect to being still in the marketing stage, we actually are because the block of Warrants that is being sold to this potential purchaser is not the full block of Warrants. It's not the entirety of the GUC Warrants and so there are still Warrants that are subject to being sold.

The reason we have been, I suppose, ambiguous

about the purchase price or not really talked about the purchase price in particular is because we don't want to have the purchase price out there, number one, for the fact that it could be setting a watermark for the other Warrants that are subject to potential marketing and sale, and obviously the Plan Administrator wants to maximize the value that we get for those other Warrants.

And to be tied into a number on those other Warrants because we talked about the purchase price of these Warrants, I think is not prudent.

But secondly, we also -- if this transaction for whatever reason does not close for the same reasons we don't want to be slide into a purchase price that has been put out there as something that the Plan Administrator would be willing to accept.

So there's no reason for the ambiguity other than wanting to maintain the opportunity to maximize the value of these Warrants. In the event that, you know, the Plan Administrator reaches an agreement to sell the remaining Warrants, which is to do, or have to resell these Warrants because for whatever reason the buyer on this potential sale doesn't close.

We don't anticipate that will be the case. We anticipate that they will close as soon as we get the relief that was requested and we're able to close the sale before

they walk by year-end as they requested.

But that's the reason with respect to the purchase price.

With respect to the identity of the sellers, our understanding -- and Mr. Dunn, the Plan Administrator, went through an independent broker for purposes of marketing these Warrants. We requested the Plan Administrator obtained representation that this is not an insider QNE. This is not a party that had been restricted in any way and those are the elements that were important to the Plan Administrator to make sure that, you know, these Warrants were not being sold to a party that any type of non-public information that would affect their willingness to purchase the Warrants and at what price.

And so with respect to the identity of the purchaser, this has all gone through an independent broker with the representations that I just set forth regarding non-insider status.

THE COURT: So does Mr. Dunn know who the purchaser is?

MR. DUNN: No. I don't believe that that has been disclosed to the broker.

THE COURT: I'm sorry, not been disclosed to the broker or by the broker?

MR. DUNN: Through the broker, yes, by the broker,

Your Honor.

THE COURT: And what's your reaction to the issue of no admin costs get paid, other than are directly related to the sale of the GUC?

MR. DUNN: Your Honor, our view as we said in the motion is that as assets of the post-confirmation, post-effective date Debtors, that the Plan already sets forth what can be done with the assets of the post-effective date Debtors.

And to the extent that there is any ambiguity or that there's a need to use the proceeds for any type of administrative expenses beyond of what the Court has laid out and that if we need to come back to the Court to seek relief on that point, then that's what the Plan Administrator will have to do.

We do agree that for purposes of the administrative expenses of marketing and selling the GUC Warrants and bringing this motion, the items that Your Honor detailed, that that would be appropriate to come out of the proceeds of the Warrants.

THE COURT: All right. Let me hear if anyone -- first of all, I accept the representation about amount and identity primarily, however, because you're not asking me to bless any of that.

In the proposed Order you didn't ask me to bless

his business judgment at all and I am not questioning his business judgment, but I don't think I would be in a position to bless it without knowing that information. But given the limited nature of the relief that you're seeking and the representations you're making, I don't have a problem granting an Order that says he has the authority to do this, which is what -- I think that's all you're asking me to do.

If at some point you need more than that, you're free to come back, but then we're going to need obviously information before we can sustain the business judgment. I will require the Order to be amended.

Let me hear if Mr. Eisenberg or anyone else has any objection to me going in and authorizing the direct expenses of doing the deal as administrative expenses against the proceeds, because I don't know what your intent was on that, Mr. Eisenberg, and it just seems like that's kind of a waste of time to come back if they're direct expenses. But nothing else would be authorized.

So let me hear from Mr. Eisenberg and then anyone else that has a problem.

MR. EISENBERG: No objection to including that as part of the Order, Your Honor.

THE COURT: Thank you.

Does anyone else wish to address the Order?

(No audible response.)

THE COURT: All right. Mr. Dunn, can I get you to upload that today?

MR. DUNN: Yes, Your Honor. We will do so.

MR. EISENBERG: Thank you, Your Honor. Philip Eisenberg. Yeah, Philip Eisenberg, can I see the redline order and comment on it before it gets uploaded?

THE COURT: Sounds like a good idea.

MR. DUNN: I'm happy to share with Mr. Eisenberg.

MR. EISENBERG: Thank you. Thank you, Mr. Dunn.

THE COURT: Thank you all.

What I find if we have jurisdiction over this under 28 USC Section 1334. This is a core matter under 28 USC Section 157. We are directly dealing with application of the Plan and the ambiguity in the Plan and its associated closing documents.

I find that the ambiguity should be resolved very much in a way that Mr. Dunn has proposed with the one caveat that I have mentioned, which is that there actually is at this point the legal title owner to the GUC Warrants.

As to whether that was correct or incorrect at the time that it was done is largely irrelevant at this point.

The best interpretation that I can give to this ambiguity is that these GUC Warrants are something people get to count on as a distribution passed through, either

directly by getting the GUC Warrants, or a pass-through of the proceeds.

That's why I'm just saying they're not going to be charged with anything other than the expense of actually cashing in on the GUC Warrants.

But beyond that, I believe that we are appropriately reconciling what the Plan says, what the intent of it was.

No party is actually objecting to this. I just hope Mr. Dunn is given a lot of money for them.

So I guess we'll learn that at some point in the future. So if you'll upload the Order. I find that the matter should be approved.

Would you send a note to Ms. Do when you get it filed so that I can get it pretty quickly?

MR. DUNN: Yes, Your Honor. We will do so.

THE COURT: Okay. Thank you.

I expect to enter it today, if I can get by 2:00 o'clock or so, something like that?

MR. DUNN: That's doable. Thank you.

THE COURT: All righty. Thank you.

Anyone else have anything you need to raise? Otherwise, we will recess and I'll wish everybody a Happy Holiday.

MR. DUNN: Happy Holidays, Your Honor.

MR. EISENBERG: Happy Holidays, Your Honor.

THE COURT: Thank you. Bye-bye.

(Hearing adjourned at 9:24 a.m.)

* * * * *

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the ZOOM/video/telephonic proceedings in the above-entitled matter.

/S/ MARY D. HENRY

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